

EXHIBIT C

- 1 -

1

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481 (RDD); Adv. Proc. No. 07-02619 (RDD);
5 Adv. Proc. No. 07-02242 (RDD); Adv. Proc. No. 07-02256 (RDD);
6 Adv. Proc. No. 07-02333 (RDD); Adv. Proc. No. 07-02580 (RDD);
7 Adv. Proc. No. 07-02661 (RDD); Adv. Proc. No. 07-02743 (RDD);
8 Adv. Proc. No. 07-02768 (RDD); Adv. Proc. No. 07-02769 (RDD);
9 Adv. Proc. No. 07-02790 (RDD); Adv. Proc. No. 07-02076 (RDD);
10 Adv. Proc. No. 07-02084 (RDD); Adv. Proc. No. 07-02096 (RDD);
11 Adv. Proc. No. 07-02125 (RDD); Adv. Proc. No. 07-02177 (RDD);
12 Adv. Proc. No. 07-02188 (RDD); Adv. Proc. No. 07-02211 (RDD);
13 Adv. Proc. No. 07-02212 (RDD); Adv. Proc. No. 07-02236 (RDD);
14 Adv. Proc. No. 07-02250 (RDD); Adv. Proc. No. 07-02262 (RDD);
15 Adv. Proc. No. 07-02270 (RDD); Adv. Proc. No. 07-02291 (RDD);
16 Adv. Proc. No. 07-02328 (RDD); Adv. Proc. No. 07-02337 (RDD);
17 Adv. Proc. No. 07-02348 (RDD); Adv. Proc. No. 07-02432 (RDD);
18 Adv. Proc. No. 07-02436 (RDD); Adv. Proc. No. 07-02449 (RDD);
19 Adv. Proc. No. 07-02479 (RDD); Adv. Proc. No. 07-02525 (RDD);
20 Adv. Proc. No. 07-02534 (RDD); Adv. Proc. No. 07-02539 (RDD);
21 Adv. Proc. No. 07-02551 (RDD); Adv. Proc. No. 07-02581 (RDD);
22 Adv. Proc. No. 07-02597 (RDD); Adv. Proc. No. 07-02618 (RDD);
23 Adv. Proc. No. 07-02623 (RDD); Adv. Proc. No. 07-02659 (RDD);
24 Adv. Proc. No. 07-02672 (RDD); Adv. Proc. No. 07-02702 (RDD);
25 Adv. Proc. No. 07-02723 (RDD); Adv. Proc. No. 07-02743 (RDD);

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1 Adv. Proc. No. 07-02744 (RDD); Adv. Proc. No. 07-02750 (RDD);
2 Adv. Proc. No. 07-02188 (RDD)

4 In the Matter of:

5 DPH HOLDINGS CORP., et al.,

6 Reorganized Debtors.

8 DELPHI CORPORATION, et al.,

9 Plaintiffs,

10 -against-

11 | SETECH INC., et al.,

12 Defendants.

14 DELPHI CORPORATION, et al.,

15 Plaintiffs,

16 -against-

17 DUPONT COMPANY, et al.,

18 Defendants.

20 DELPHI CORPORATION, et al.,

21 Plaintiffs,

22 -against-

23 ECO-BAT AMERICA LLC,

24 Defendant.

- 4 -

1. *What is the primary purpose of the study?*

2 DELPHI CORPORATION, et al.,

4 -against-

5 RSR CORPORATION, et al.,

6 Defendants.

8 | DELPHI CORPORATION, et al.,

9 Plaintiffs,

10 -against-

11 RSR/ECOBAT,

12 Defendant.

14 DELPHI CORPORATION, et al.

15 Plaintiffs,

16 -against-

17 TYCO et al.,

18 Defendants.

20 DELPHI CORPORATION, et al.,

21 Plaintiffs,

22 -against-

23 AHAUS TOOL & ENGINEERING INC.,

24 Defendant.

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2 DELPHI CORPORATION, et al.,
3 Plaintiffs,

8 DELPHI CORPORATION, et al.,
9 Plaintiffs,
10 -against-
11 EDS, et al.,

- 8 -

2 DELPHI CORPORATION, et al.,
3 Plaintiffs

4 -against-

5 GKNS INTERMETALS

6 | Defendant.

8 | DELPHI CORPORATION, et al.,

9 Plaintiffs,

10 -against-

11 EX-CELL-O MACHINE TOOLS INC.,

12 | Defendant.

14 DELPHI CORPORATION, et al.,

15 Plaintiffs,

16 -against-

17 JOHNSON CONTROLS, et al.,

18 Defendants.

91

20 DELPHI CORPORATION, et al.,

21 Plaintiffs,

22 -against-

23 NILES USA INC., et al.,

24 Defendants.

- 13 -

2 | DELPHI CORPORATION, et al.,

3 | Plaintiffs,

4 -against-

5 M & Q PLASTIC PRODUCTS, et al.,

6 Defendants.

8 DELPHI CORPORATION, et al.,

9 Plaintiffs,

10 -against-

11 | REPUBLIC ENGINEERED PRODUCTS, et al.,

12 Defendants.

14 DELPHI CORPORATION, et al.,

15 Plaintiffs,

16 -against-

17 RIECK GROUP LLC,

18 Defendant.

19 - - - - - - - - - - - - - - -

20 DELPHI CORPORATION, et al.,

21 Plaintiff

22 -against-

23 CRITECH RESEAR

24 | Page

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1 U.S. Bankruptcy Court
2 300 Quarropas Street
3 White Plains, New York

4
5 July 22, 2010
6 10:20 AM

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9 B E F O R E:
10 HON. ROBERT D. DRAIN
11 U.S. BANKRUPTCY JUDGE

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1 this point, but to me the Constitutional issue, you know, the
2 due-process issue here, is not so much the running of time as
3 the issue of whether and how the defendants got notice of the
4 Rule 4 motions. If they didn't get notice, then it's wide
5 open. If they did get notice, I think there's a 60(b) hurdle.
6 But if they didn't get notice, it's wide open and I should look
7 at it as whether, you know, it was appropriate to have entered
8 those orders. And they should have all their -- you know,
9 their right to say they shouldn't have been entered.

10 MS. SCHWEITZER: Right. Your Honor, I think Your
11 Honor -- as you're raising, there are very difficult questions
12 raised when you look at both sides of this argument. You
13 raised several points and I'd like to take some of them in
14 turn. The first one is just the raising of the 4(m) and the
15 fact the Supreme Court has said that there's no *per se* due-
16 process violation in terms of changing a statute of
17 limitations. That's said in the context of policy decisions of
18 policymakers making a uniform decision that 'We're going to
19 change the rule. We're going to change the law because BP has
20 now intoxicated the entire Gulf of Mexico and we need to say
21 it's not fair that people have a year to bring those claims.'
22 There's been no grand policy decisions here.

23 And in fact the debtors didn't need more time to bring
24 the claims. The debtors said 'I'll file these claims in a
25 timely manner.'

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1 THE COURT: But, I mean, a policy could be un-
2 Constitutional too. I mean, Congress may say that we want to,
3 you know -- well --

4 MS. SCHWEITZER: Right.

5 THE COURT: -- that 'We decide as a policy matter to
6 legalize slavery. You know, that clearly violate the due-
7 process clause. It's a policy decision, but --

8 MS. SCHWEITZER: Right.

9 THE COURT: So I don't --

10 MS. SCHWEITZER: But --

11 THE COURT: I mean, I think the point is that the
12 statute of limitations, I don't believe, is the type of
13 interest that's protected by due process.

14 MS. SCHWEITZER: But I think that there's two
15 different things that happen here to the debtors is that they
16 claim that they satisfied the statute of limitations. They
17 said 'We filed these timely,' right? And 'We met the two and a
18 half year deadline.'

19 THE COURT: Right.

20 MS. SCHWEITZER: 'But what we want to do after that
21 point is put these in a drawer, put them under lock and seal
22 and affirmatively not tell people about these claims' in two
23 different ways: in filing these extension motions without
24 particularized notice, and I'll get to that; and the second way
25 is affirmatively sealing not only the complaint, which we now

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1 know contains no confidential information, no commercial reason
2 that you need to sell this complain other than to let someone
3 know it doesn't exist.

4 THE COURT: Right.

5 MS. SCHWEITZER: And they not only sealed that, but
6 they actually sealed the docket itself so that any diligent
7 counterparty who regularly searches the federal docket to find
8 out if they've been sued and whether it's because they're
9 selling their company or because they want to take reserves or
10 because they want to do whatever they do in the ordinary
11 course, could not find this docket.

12 And the debtors' explanation for that is they want to
13 preserve business relationships with folks, folks I assume like
14 HP who has continued to do business with them.

15 THE COURT: I understand, but to me that all goes to
16 laches. I mean, it just -- it strikes me that tomorrow
17 Congress could say that for debtors-in-possession the two-year
18 period is a six-year period. And there's nothing that you all
19 could do about that.

20 MS. SCHWEITZER: But the fact --

21 THE COURT: I mean, you could vote out your
22 congressmen, but that would be it.

23 MS. SCHWEITZER: Right, and -- fair enough, but I
24 think that the answer there is that if you -- that these
25 arguments definitely do bleed into each other. And whether you

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1 smoothly with you, I'm going to say' --

2 THE COURT: But, again, isn't that on a case-by-case
3 basis? I mean, I -- as far as I can see, there's one case that
4 concludes that 4(m) relief was improperly granted and that case
5 wasn't on due process grounds. The Ninth Circuit just said,
6 'You know, we don't really set a standard for when it's
7 improperly granted, but it was improperly granted.' So, I
8 mean, it just seems to me that it's much more of a case-by-case
9 analysis, depending on the, you know, the harm that happened to
10 people.

11 MS. SCHWEITZER: Right. Well, I guess --

12 THE COURT: With the exception -- let me stop you.

13 MS. SCHWEITZER: Okay.

14 THE COURT: With the exception that under Rule
15 60(b)(4), if someone really didn't get notice of the extension
16 motions, then it would seem to me they should be able to argue
17 to me as if the motions were being made right now, although
18 I'll hear the debtors on that. But, that seems to be the way
19 to look at it.

20 MS. SCHWEITZER: Right. Well, Your Honor --

21 THE COURT: And then, the notice that would trigger
22 the Rule 60(b)(4) analysis would be due process notice and
23 consistent with not only Espinosa, but Mulane and the like.
24 It's true, if -- if the notice was buried or confusing or the
25 like, then I would understand that, too, as a violation of due

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1 process. I mean, a Chapter 13 plan is probably a little easier
2 to deal with than a case that probably has a hundred docket
3 entries, than thousands.

4 MS. SCHWEITZER: Well, I would certainly take the
5 position that you're in a position to find a per se violation
6 but I do believe that there are facts of prejudice that
7 ultimately could and would be shown. And I've highlighted some
8 of those and I think some of those are universal but in the
9 interest of not stepping on Mr. Winsten's time and also --

10 THE COURT: Okay.

11 MS. SCHWEITZER: -- recognizing that there are other
12 arguments to be had, I think that if it's all right with Your
13 Honor, I'd move to the Rule 8 arguments.

14 THE COURT: Well, who is -- okay. But --

15 MS. SCHWEITZER: Or would you like Mr. Winsten --

16 THE COURT: -- I'm happy to get to those, I just --
17 who is covering Rule 4(f)?

18 MS. SCHWEITZER: Mr. Winsten.

19 THE COURT: Okay. So, I'll wait for you, then.

20 MS. SCHWEITZER: Would you like --

21 THE COURT: So, no, no --

22 MS. SCHWEITZER: -- I'd be happy to cede the podium --

23 THE COURT: -- Rule 8 --

24 MS. SCHWEITZER: I'm happy to cede the podium in any
25 order --

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1 re Hydrogen, LLC, 2010 WL 1609, 536 (Bankr. S.D.N.Y., April 20,
2 2010). In re McLaughlin, 415 B.R. 23 (Bankr. D.N.H. 2009)
3 In re Caremerica Inc., 409 B.R. 737 (Bankr. E.D.N.C. 2009).

4 I've stated during oral argument why I believe all
5 three of these elements of the claim need to be pled with more
6 clarity in the context. In particular, while it may seem at
7 first glance that anyone receiving money has to receive it for
8 some purpose and therefore it's reasonable to infer in the
9 context that that purpose is to pay an antecedent debt, that is
10 not always the case. Debtors may pay COD or in advance. And
11 in addition, in identifying the debt, a complaint may therefore
12 also enable a debtor to show that the creditor, or the
13 transferee, rather, received more than it would otherwise in a
14 Chapter 7 case which would, in the case of a contract that had
15 been subsequently assumed, be a basis for dismissing the claim.

16 So I concluded that the complaints need to be
17 dismissed, and I've given DPH Holdings forty-five days from
18 today to file a motion for each complaint seeking leave to
19 amend each complaint. That motion should attach the form of
20 complaint -- or must attach the form of complaint that would be
21 proposed to be filed as an amended complaint. And if such a
22 motion is not filed for any particular complaint, that
23 complaint will be dismissed upon the movant submitting to me a
24 proposed order dismissing the complaint, CC'ing on the e-mail
25 counsel for DPH and stating that in fact notwithstanding my

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